

State of Wisconsin



2011 Assembly Bill 322

Date of enactment: **March 19, 2012**

Date of publication*: **April 2, 2012**

2011 WISCONSIN ACT 124

AN ACT to create 106.57 of the statutes; relating to: accessible instructional materials for students with disabilities enrolled in institutions of higher education.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 106.57 of the statutes is created to read:
106.57 Postsecondary education; accessible instructional material for students with disabilities.

(1) DEFINITIONS. In this section:

(a) "Alternative format" means Braille, large print texts, audio recordings created with the use of text-to-speech technology, electronic formats used with screen reader devices or other assistive technology, or digital talking books that are required by a student with a disability to make instructional material accessible to the student.

(b) "Electronic format" means a computer file or other digital medium embodying instructional material that can be made into an alternative format or that is capable of serving as an alternative format, if used with a screen reader device or other assistive technology.

(c) "Institution of higher education" means an institution or college campus within the University of Wisconsin System, a technical college within the technical college system, or a private, nonprofit institution of higher education that is a member of the Wisconsin Association of Independent Colleges and Universities.

(d) "Instructional material" means a textbook or other material written and published in print format primarily for use by students in postsecondary instruction

that is required or essential to the success of a student with a disability in a course of study in which the student is enrolled, as determined by the instructor of the course in consultation with the person specified in sub. (2) (b) who requests that material in alternative format or electronic format under sub. (2) (a).

(e) "Maintain the structural integrity" means to include all of the information provided in the original instructional material, including the text of sidebars; the table of contents; chapter headings and subheadings; footnotes; indexes; glossaries; bibliographies; non-textual elements, such as pictures, illustrations, graphs, charts, and screenshots; and any other data that are pertinent to the instructional material, when that original instructional material is provided in alternative format or electronic format.

(f) "Publisher" means a person that is in the business, whether for profit or not for profit, of selling instructional material in which the person owns or controls some or all of the copyright. "Publisher" does not include a person that is a member of a nationwide exchange network that facilitates and supports the delivery of instructional material in alternative format to students with disabilities, if that material is delivered to those students through that network within 7 working days after a request for that material is made.

(g) "Student with a disability" means a student enrolled in an institution of higher education who is blind

* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

or visually impaired, or who has a specific learning disability or other physical condition that prevents the student from using instructional material in standard print format, and who needs reasonable accommodations to read.

(h) "Writing" includes facsimile transmission or electronic mail.

(2) REQUEST FOR INSTRUCTIONAL MATERIAL IN ALTERNATIVE OR ELECTRONIC FORMAT. (a) Except as provided in this paragraph, an institution of higher education, on behalf of a student with a disability, may request a publisher to provide instructional material in alternative format or electronic format by submitting to the publisher a request that complies with par. (b) and with any additional requirement imposed by the publisher under par. (c). An institution of higher education may not request a publisher to provide instructional material under this paragraph if the instructional material in the particular format needed by the student is commercially available from the publisher of the material.

(b) A request under par. (a) for instructional material in alternative format or electronic format shall be prepared and signed by the coordinator of services for students with disabilities at the institution of higher education or by another employee of the institution of higher education who is responsible for providing services or accommodations for students with disabilities or for monitoring compliance with the federal Americans with Disabilities Act, 42 USC 12101 to 12213, or the federal Rehabilitation Act of 1973, 29 USC 701 to 796L, on behalf of the institution of higher education, shall provide notice to the publisher of the publisher's duties under this section, and shall certify all of the following:

1. That a copy of the instructional material in standard format has been purchased for use by a student with a disability by the student or by the institution of higher education in which the student is enrolled. The institution of higher education shall keep records sufficient to verify that a separate copy of instructional material in standard format has been purchased for each student with a disability for whom instructional material in alternative format or electronic format is requested under par. (a), and a publisher has the right to inspect, or receive copies of, those records that relate to instructional material published by the publisher.

2. That the student is a student with a disability.

3. That the instructional material is for use by the student with a disability in connection with a course at the institution of higher education in which the student is enrolled.

4. Whether the institution of higher education has in its possession a copy of the instructional material in electronic format and, if so, whether that copy is capable, if used with assistive technology, of serving as an alternative format suitable for the needs of the student with a disability or of being converted, using generally available

technology, into the particular alternative format needed by the student.

(c) A publisher may require a request under par. (a) to also be accompanied by a statement signed by the student or, if the student is a minor, the student's parent, guardian, or legal custodian agreeing to all of the following:

1. That the student will use the instructional material in alternative format solely for his or her own educational purposes.

2. That the student will not copy or distribute the instructional material in alternative format for use by others.

(3) PROVISION OF INSTRUCTIONAL MATERIAL IN ALTERNATIVE OR ELECTRONIC FORMAT. (a) In response to a request under sub. (2) (a), on behalf of a student with a disability, for instructional material in alternative format or electronic format, a publisher shall do one of the following:

1. Provide to the requester a copy of the instructional material in alternative format by delivering a computer disk or file.

2. Provide to the requester access to the instructional material in alternative format by providing an Internet password or by providing that access in any other appropriate matter.

3. Provide to the requester a copy of the instructional material in electronic format.

4. At its option, grant to the institution of higher education permission to convert the instructional material into the particular alternative format needed by the student with a disability.

5. If the publisher believes that it is unable to act under subd. 1. to 4. because the publisher does not own or control some or all of the copyright in the instructional material, provide to the requester the name of the person that, to the best of the publisher's knowledge, is able to fulfill the request.

(b) Within 7 days after receipt of a request under sub. (2) (a), a publisher shall respond to the request by providing to the requester one of the following notices in writing:

1. A notice advising the requester as to which of the actions under par. (a) 1. to 3. the publisher intends to take.

2. If the request indicates that the institution of higher education has in its possession a copy of the instructional material in electronic format and that the copy is capable of serving as an alternative format suitable for the needs of the student with a disability or of being converted into the particular alternative format needed by the student, a notice advising the requester that the publisher intends to take none of the actions under par. (a) 1. to 3. If this subdivision applies, the publisher may grant permission to convert the instructional material into alternative format as provided in par. (a) 4.

3. If the publisher does not possess a copy of the instructional material in alternative format or electronic format or if the publisher does not possess technology that will maintain the structural integrity of the instructional material, a notice advising the requester that the publisher intends to take none of the actions under par. (a) 1. to 3. If this subdivision applies, the publisher may grant permission to convert the instructional material into alternative format as provided in par. (a) 4.

4. If the publisher believes that it is unable to act under par. (a) 1. to 4. because the publisher does not own or control some or all of the copyright in the instructional material, notice of the name of the person that, to the best of the publisher's knowledge, is able to fulfill the request.

(c) 1. If the publisher provides notice under par. (b) 1. that the publisher intends to provide a copy of the instructional material in electronic format as provided in par. (a) 3., the publisher shall provide the material in that format no later than 7 days after providing that notice.

2. If the publisher provides notice under par. (b) 1. that the publisher intends to provide a copy of the instructional material in alternative format as provided in par. (a) 1. or to provide access to the instructional material in alternative format as provided in par. (a) 2., the publisher shall provide the material in that format or provide that access no later than 14 days after providing that notice.

(d) Instructional material provided by a publisher in alternative format or electronic format shall meet all of the following requirements:

1. To the extent possible, maintain the structural integrity of the original instructional material, except that this requirement does not apply to nontextual instructional material unless the publisher possesses technology that will maintain the structural integrity of the nontextual instructional material. If the publisher does not have technology that will maintain the structural integrity of the original instructional material, the publisher shall so notify the institution of higher education under par. (b) 3. and may grant permission to the institution of higher education to convert the instructional material into alternative format as provided in par. (a) 4.

2. Be compatible with an assistive technology that is suitable for the needs of the student with a disability or, if the student needs an embossed Braille version of the instructional material, be compatible with commonly used Braille translation software.

3. Include corrections and revisions that have been generally published with respect to the instructional material.

(e) 1. Subject to subd. 2., an institution of higher education may create an alternative format of instructional material for which a request has been made under sub. (2) if any of the following apply:

a. The publisher provides a copy of the instructional material in electronic format under par. (a) 3.

b. The publisher grants permission to convert the instructional material into alternative format as provided in par. (a) 4.

c. The publisher responds to the request as provided in par. (b) 2.

d. The publisher does not respond to the request as required under par. (b).

e. The publisher does not fulfill the request as provided in par. (c) 1. or 2.

2. An institution of higher education may not create an alternative format of instructional material if the instructional material in the particular alternative format needed by a student with a disability is commercially available from the publisher of the material.

(f) A publisher that sells instructional materials for use by students enrolled in institutions of higher education shall provide the name and contact information of its office or employee who is designated to handle requests under sub. (2) (a) to the persons specified in sub. (2) (b) for those institutions. A publisher may provide that information either by posting that information on its Internet site or by providing that information in writing to those persons. If a publisher fails to provide that information, a person specified in sub. (2) (b) may request that information, or may request instructional material under sub. (2) (a), by sending the request to the publisher at the address of the publisher's principal place of business, directed to the attention of the publisher's rights and permissions department.

(g) Nothing in this subsection may be construed to require a publisher to incur an investment that the publisher cannot reasonably recoup. If a publisher has not previously produced a digital version of fully typeset and edited instructional material, including instructional material produced through a method that does not require the creation of a digital file, the publisher may condition its provision of the instructional material in alternative format or electronic format on payment of reasonable compensation for the expense of creating that format.

(4) USE OF INSTRUCTIONAL MATERIALS IN ALTERNATIVE OR ELECTRONIC FORMAT. (a) 1. Subject to subds. 2. and 3., if an institution of higher education has in its possession a copy of instructional material in alternative format or electronic format that has been provided by a publisher under sub. (3) (c) or an alternative format of instructional material that has been created by the institution of higher education under sub. (3) (e), the institution of higher education shall satisfy all subsequent requests for instructional material in that format from its own students without requesting the publisher to provide that material and may, if requested, provide instructional material in that format to another institution of higher education for use by a student of that other institution.

2. An institution of higher education that satisfies a request for or provides instructional material under subd.

1. shall, for each student for whom the instructional material is provided, provide to the publisher the information specified in sub. (2) (b) 1. to 4. and the statement specified in sub. (2) (c).

3. An institution of higher education may not satisfy a request for or provide instructional material under subd. 1. if the institution receives notice that an alternative format or an electronic format of the instructional material in the same specifications is commercially available from the publisher of the material.

(b) An institution of higher education in possession of a copy of instructional material in alternative format or electronic format that has been provided by a publisher under sub. (3) (c) or an alternative format of instructional material that has been created by the institution of higher education under sub. (3) (e) shall take reasonable precautions to ensure that the format is not distributed to any 3rd parties, except as permitted under par. (a) 1. or (c), and shall, to the extent possible, maintain in effect all copy-protection measures embedded in the alternative format or electronic format by the publisher.

(c) An institution of higher education may contract with a 3rd party to assist the institution in creating an alternative format of instructional material as permitted under sub. (3) (e) or as otherwise permitted by the publisher. If an institution of higher education contracts with

a 3rd party under this paragraph, the contract shall provide all of the following:

1. That the electronic format from which the alternative format is created may not be further distributed by the 3rd party.

2. That any alternative format made from the electronic format may be provided only to the institution.

3. That all files provided by the institution to the 3rd party shall be returned to the institution.

4. That the 3rd party may not retain, and must destroy, any copies of its work product, including any interim work files.

5. That both the institution and the publisher shall have the power to enforce the contractual provisions specified in subds. 1. to 4.

(d) If an institution of higher education permits a student with a disability to directly use an electronic format version of instructional material, the disc or file of the electronic format version shall be copy protected, or the institution of higher education shall take reasonable precautions to ensure that the student does not copy or distribute the electronic format version in violation of the federal Copyright Act, 17 USC 101 to 1332.

(e) Nothing in this section shall be construed to authorize any use of instructional materials that would constitute an infringement of copyright under the federal Copyright Act, 17 USC 101 to 1332.
